

AMENDED IN ASSEMBLY MAY 18, 1999
AMENDED IN ASSEMBLY MAY 6, 1999
AMENDED IN ASSEMBLY APRIL 28, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 154

Introduced by Assembly Member Cunneen

January 15, 1999

An act to amend Section 1424 of the Penal Code, relating to criminal law.

LEGISLATIVE COUNSEL'S DIGEST

AB 154, as amended, Cunneen. Criminal law.

Existing law provides for a motion to disqualify a district attorney from performing an authorized duty, and provides that the motion may not be granted unless the evidence shows that a conflict of interest exists that would render it unlikely that the defendant would receive a fair trial.

The bill would revise procedural requirements applicable to the motion. It would require the notice to be made at least 10 court days before the motion is heard. It also would require the motion to set forth grounds for disqualification, and be supported by affidavits. The bill would authorize the district attorney or Attorney General to file affidavits in opposition. It would prohibit an evidentiary hearing unless there are disputed issues of material facts that cannot be resolved through the use of affidavits. It would also provide that if the motion is brought at or before the preliminary hearing, it may

not be renewed in the trial court on the basis of facts that were raised or could have been raised at the time of the original motion.

~~This bill would provide that any order or ruling denying a motion to disqualify a district attorney is not an appealable order and may not be assigned as error on an appeal from a judgment of conviction. It would provide that the order or ruling may be reviewed only by a writ of mandate from the appropriate court of appeal, and the application for the writ shall be made not later than 10 court days of notice to the parties of the order or ruling and may be made only by the moving party.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1424 of the Penal Code is
2 amended to read:
3 1424. (a) (1) Notice of a motion to disqualify a
4 district attorney from performing an authorized duty
5 shall be served on the district attorney and the Attorney
6 General at least 10 days before the motion is heard. The
7 notice of motion shall contain a statement of the facts
8 setting forth the grounds for the claimed disqualification
9 and the legal authorities relied upon by the moving party
10 and shall be supported by affidavits of witnesses who are
11 competent to testify to the facts set forth in the affidavit.
12 The district attorney or the Attorney General, or both,
13 may file affidavits in opposition to the motion and may
14 appear at the hearing on the motion and may file with the
15 court hearing the motion a written opinion on the
16 disqualification issue. An evidentiary hearing shall not be
17 held unless there are disputed issues of material fact that
18 cannot be resolved through the use of affidavits. The
19 motion may not be granted unless the evidence shows
20 that a conflict of interest exists that would render it
21 unlikely that the defendant would receive a fair trial. An
22 order recusing the district attorney from any proceeding
23 may be reviewed by extraordinary writ or may be



1 appealed by the district attorney or the Attorney
2 General. The order recusing the district attorney shall be
3 stayed pending any review authorized by this section. If
4 the motion is brought at or before the preliminary
5 hearing, it may not be renewed in the trial court on the
6 basis of facts that were raised or could have been raised
7 at the time of the original motion.

8 (2) An appeal from an order of recusal or from a case
9 involving a charge punishable as a felony shall be made
10 pursuant to Chapter 1 (commencing with Section 1235)
11 of Title 9, regardless of the court in which the order is
12 made. An appeal from an order of recusal in a
13 misdemeanor case shall be made pursuant to Chapter 2
14 (commencing with Section 1466) of Title 11, regardless of
15 the court in which the order is made.

16 ~~(3) Any order or ruling denying a motion to disqualify~~
17 ~~a district attorney is not an appealable order and may not~~
18 ~~be assigned as error on an appeal from a judgment of~~
19 ~~conviction. Such an order or ruling may be reviewed only~~
20 ~~by a writ of mandate from the appropriate court of~~
21 ~~appeal, and the application for the writ shall be made not~~
22 ~~later than 10 court days of notice to the parties of the~~
23 ~~order or ruling and may be made only by the moving~~
24 ~~party.~~

25 (b) (1) Notice of a motion to disqualify a city attorney
26 from performing an authorized duty involving a criminal
27 matter shall be served on the city attorney and the district
28 attorney at least 10 days before the motion is heard. The
29 notice of motion shall set forth a statement of the facts
30 relevant to the claimed disqualification and the legal
31 authorities relied on by the moving party. The district
32 attorney may appear at the hearing on the motion and
33 may file with the court hearing the motion a written
34 opinion on the disqualification issue. The motion may not
35 be granted unless the evidence shows that a conflict of
36 interest exists that would render it unlikely that the
37 defendant would receive a fair trial.

38 (2) An order recusing the city attorney from a
39 proceeding may be appealed by the city attorney or the
40 district attorney. The order recusing the city attorney

1 shall be stayed pending an appeal authorized by this
2 section. An appeal from an order of disqualification in a
3 misdemeanor case shall be made pursuant to Chapter 2
4 (commencing with Section 1466) of Title 11.

5 (c) Motions to disqualify the city attorney and the
6 district attorney shall be separately made.

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